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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

No._____

ALBERT E. NASSER, ALBERT E. NASSER, trustee of THE ALBERT E. NASSER AND MARY E. NASSER FAMILY TRUST, SELMA WOLF and JACK WOLF, Petitioners

v.

FEDERAL HOME LOAN BANK BOARD, an agency of the UNITED STATES, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Albert E. Nasser,
Selma Wolf, Jack
Wolf
16 Morena
Irvine, Ca 92715

Pro se

QUESTIONS PRESENTED

1. Was there jurisdiction pursuant to 12 U.S.C. § 1730a(k) of minority shareholders' challenge to savings and loan reorganization where Federal Home Loan Bank Board, acting for Federal Savings and Loan Insurance Corporation, excepted reorganization from review by said Corporation contrary to 12 U.S.C § 1730a (e)(1)(A)(i) and (ii)?

2. Did the Court of Appeals, in the exercise of its equitable powers, have jurisdiction of minority shareholders' challenge to multi-step reorganization approved by Federal Home Loan Bank Board, after exemption, contrary to law and without notice as required by 12 C.F.R. § 552.13(h)(3)?

3. Should minority shareholders' challenge to savings and loan reorganization have been transferred to District Court instead of being dismissed?

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FEDERAL HOME LOAN BANK BOARD, an agency of the UNITED STATES, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioners, above named, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

The opinion of the Court of Appeals, not yet reported, appears in the Appendix.

JURISDICTION

This action was brought pursuant to 12 U.S.C. § 1730a(k) in the United States Court of Appeals for the Ninth Circuit. The judgment of said court was entered January 24, 1984, a timely petition for rehearing was denied March 22, 1984, and the herein petition was filed within 90 days thereof. This Court's Jurisdiction is based on 28 U.S.C. § 1254 (1) which provides:

"Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

STATUTES AND REGULATIONS

Statutes

Petitioners' case involves the following statutes:

12 U.S.C. § 1730a(k)

12 U.S.C. § 1730a(1)(D)

12 U.S.C. § 1730a(e)(1)(A)(i)-(ii)

12 U.S.C. § 1730(e)(1)(B)(ii)

Regulations

Petitioners' case involves the following regulations:

12 C.F.R. § 552.13(h)(3)

12 C.F.R. § 552.4-1

STATEMENT OF THE CASE

Household Finance (Finance), a

subsidiary of Household International (HI), held 99.89% of the stock of household Federal Savings and Loan (HFS&L) and petitioners (Nasser-Wolf) held .10%[1] prior to reorganization (R. 22,25). After the multi-step mergers Finance held 100% of the stock of HFS&L.

To accomplish such reorganization, without notice to Nasser-Wolf, Finance submitted the information filing for an exception to the Federal Savings and Loan Insurance Corporation (FSLIC) pursuant to 12 C.F.R. § 584.4-1 and disclosed that it would form a phantom association to be merged with HFS&L into a new holding company HFC Corporation (HFC) with shareholder equities remaining in the same relative percentages (R. 18-34). Exemption was granted pursuant to

---

[1]The shares were founder's shares acquired by Nasser some 25 years ago.

12 U.S.C. § 1730a(e)(1)(B) by the Federal Home Loan Bank Board's (FHLBB) supervisory agent who was informed by Finance of a final merger whereby it would obtain 100% of the stock of HFS&L and eliminate the interest of Nasser-Wolf (R. 35-36). The exemption was disputed, subsequently, by Nasser-Wolf as contra 12 U.S.C. § 1730a(e)(1)(A)(i-ii) since Finance was a holding company, 12 U.S.C. § 1730a(a)(1)(D), that acquired, in the first step HFC, a holding company, and acquired, in the final step, 100% of HFS&L, an insured institution.

Beginning on October 25, 1983, Finance published notice of the reorganization and therein stated, in part, that the current shareholders of HFS&L would be the shareholders of the new holding company (R. 95-97). The public was not informed that a final merger would eliminate petitioners. Notice to Nasser-

Wolf as mandated by 12 C.F.R. § 552.13 (h)(3), was not given. On December 27, 1982, the FHLBB issued its resolutions permitting the chartering of the phantom federal association and approving its merger with HFS&L (R. 1-4). By these resolutions the stock interests of Finance and Nasser-Wolf in HFS&L were transferred to HFC. The effective date of the merger was February 1, 1983 (R.145).

On January 26, 1983, Nasser-Wolf filed their petition for review under 12 U.S.C § 1730a(k). On February 4, 1983, they submitted a request for stay to the FHLBB and on March 17, 1983, filed a motion for stay of the FHLBB resolutions and on April 1, 1983, moved to file an amended petition naming the FSLIC as an additioal party. The Court of Appeals denied the

motion for stay on May 10, 1983, and referred the amendment to the hearing on the merits which was held December 6, 1983. Meanwhile, on February 25, 1983, Finance merged with HFC and Finance, as the survivor, now holds 100% of the stock of HFS&L. This final merger was done without FSLIC or FHLBB approval.

In its opinion, filed January 20, 1984, the Court of Appeals concluded that it lacked jurisdiction and dismissed the petition primarily because Nasser-Wolf did not appeal orders of the FSLIC under 12 U.S.C. § 1730a. The opinion distinguished Fort Worth National Corp. v. FSLIC, 469 F.2d 47 (5th Cir. 1972) in which a resolution of the FHLBB was construed to be an order of the FSLIC within 12 U.S.C. § 1730a(k) because the

FSLIC had disapproved an acquisition under 12 U.S.C. § 1730a(e) whereas in the instant case the transaction was exempt from FSLIC approval under section 1730a ". . . by virtue of section 1730a (e)(1)(B)(ii). . ."

REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW CONFLICTS, IN PRINCIPLE, WITH THE DECISION OF THE COURT OF APPEALS OF THE FIFTH CIRCUIT CONCERNING AVENUES OF REVIEW OVER FHLBB RESOLUTIONS AND FSLIC ORDERS.

12 U.S.C. § 1730a(k) provides in part that "(a)ny party aggrieved by an order of the (FSLIC) Corporation under this section may obtain review of such order by filing in the court of appeals of the United States for the circuit in which the principal office of such party is located, . . . a written petition . . ."

In Fort Worth National Corp. v. FSLIC, supra, 469 F.2d 47, 52-54, FSLIC action on an acquisition was the predicate for

FHLBB resolution that became an order of the FSLIC within section 1730a(k). In addition, the Fort Worth Court stated that other avenues of review, based on the equity power of the court, were available where the statutory review procedure was inadequate or where the agency exceeded its statutory or constitutional authority.

Herein, Finance's exemption from the FSLIC required FSLIC action and the FHLBB resolutions were predicated on that action which was an order within 12 U.S.C § 1730a(k), under the reasoning of the Fifth Circuit Court of Appeals. Where such exemption does not provide a basis for review within section 1730a(k) the Fifth Circuit would provide an avenue of review because of the inadequacy of the statutory procedure. Where, as here, Finance was a holding company within

12 U.S.C. § 1730a(a)(1)(D) and review by the FSLIC was made mandatory by 12 U.S.C. § 1730a(e)(1)(i) and (ii) of Finance's acquisitions, the exemption granted by the agency was in excess of its authority and thus an additional avenue of review according to the Fifth Circuit which cited the doctrine of Leedom v. Kyne (1958) 358 U.S. 184, as its authority.

The herein lower court's unwillingness to provide any avenue of review, statutory or otherwise, deprived Nasser-Wolf of any plain, speedy or adequate remedy to object to the herein reorganization whereby Finance eliminated the equity of Nasser-Wolf, and seized 100% control of HFS&L, an insured institution, without any regulatory scrutiny of the final merger.

2. THE DECISION BELOW DISENFRANCHISES MINORITY SHAREHOLDERS WITHOUT NOTICE OR REMEDY AND ITS STRICT JURISDICTIONAL BAR TO

REVIEW OF FHLBB AND FSLIC ACTION NEEDS TO BE REVIEWED AND DEFINED BY THIS COURT.

The FSLIC exemption and the FHLBB resolutions herein permitting elimination of minority shareholders without notice and seizure of 100% control by a dominant shareholder without regulatory scrutiny has sent a message to every savings and loan executive and shareholder throughout the nation: There is an open season on small shareholders. The hunting is good and there are no limits. Exemption is the license and the fees are minimal.

Such a message, unintended as it may be, is nevertheless a reality under the herein facts and the ruling of the Court of Appeals that jurisidiction is lacking and bars the action. Such a message defeats the congressional policy that review in the court of appeals would provide an efficient and timely resolution

of disputes concerning agency actions and would promote uniformity in judicial decisions.

The correctness of the decision below, moreover is open to serious question. The record shows that Finance met the statutory definition of a holding company and that its proposed reorganization of HFS&L whereby it ultimately acquired 100% control of an insured institution plainly required FSLIC approval or disapproval.

Finally, elemental fairness and not just the statutory mandate required that Nasser-Wolf be given early and adequate notice of the complex reorganizational events which ultimately cost them their equity and exposed them, not to a tax free reorganization enjoyed by Finance, but a taxble cash out at a time of plain depression in the savings and loan industry. (R. 42).

Jurisidiction, in this important area of shareholder rights in a reorganization should not be dependent on whether the exemption is approved or disapproved. Otherwise, challengers to such reorganization will be deprived of a remedy before they have notice of the transaction. Certainty is absolutely essential for otherwise shareholders will consume, as here, a year of litigation only to learn they are out of court. Certainty can be provided where, as here, the FHLBB interjects itself to discharge a function of the FSLIC (exemption from FSLIC approval) by ruling that such conduct establishes the jurisdiction required under 12 U.S.C. § 1730a(k). Such jurisdiction is critical where, as here, the final merger ousting the equity of Nasser-Wolf was ignored.

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the lower court.

Dated: June 19, 1984.

Respectfully submitted,

Albert E. Nasser, Albert E. Nasser, trustee of the Albert E. Nasser and Mary E. Nasser, Family Trust, Selma Wolf and Jack Wolf

Pro se

COURT OF APPEALS OPINION

Petition to Set Aside Resolutions of the

Federal Home Loan Bank Board

Argued and Submitted December 6, 1983

Before: SKOPIL, FERGUSON and CANBY, Circuit Judges, FERGUSON, Circuit Judge:

Plaintiffs, formerly 0.11% minority shareholders of Household Federal Savings and Loan Association (HFS&LA) bring this appeal to set aside two resolutions of the Federal Home Loan Bank Board (Bank Board) which approved a reorganization of HFS&LA. The several-step reorganization involved the transfer of ownership to a newly formed corporation, HFC Corp., and a merger with a specially chartered interim, or "phantom," savings and loan institution. See 47 Fed. Reg. 17797 (1982). As a result of these transactions, the plaintiffs lost their 0.11% interest in HFS&LA and received a pro rata interest in HFC Corp.

Nasser brought this action under 12 U.S.C. § 1730a(k), which provides in part that "(a)ny party aggrieved by an order of the (Federal Savings and Loan Insurance) Corporation under this section may obtain a review of such order by filing in the court of appeals of the United States for the circuit in which the principal office of such party is located." Because Nasser did not appeal an order of the Federal Savings and Loan Insurance Corporation (FSLIC) under 12 U.S.C. § 1730a, this court lacks jurisdiction and the appeal is dismissed.

DISCUSSION

The actions challenged in this case are two resolutions of the Bank Board: (1) chartering the interim federal association in which HFC Corp. would be the sole depositor, and (2) approving the merger of the HFS&LA into this interim federal association. By these resolutions the

Bank Board approved the transfer of ownership of HFS&LA from its previous stockholders, plaintiffs and Household Finance Corporation, which owned 99.98% of the stock, to HFC Corp.

As an acquisition of a federal savings and loan association by a new holding company, this transaction would ordinarily require prior approval by the FSLIC under 12 U.S.C. § 1730a(e)(1) and 12 C.F.R. § 584.4. However, this transaction fell within an exception to that general rule, which provides that no such approval is required

> in connection with the control of an insured institution ... (ii) acquired in connection witha reorganization in which a person or group of persons, having had control of an insured institution for more than three years, vests control of that institution in a newly formed holding company subject to the control of the same person or group of persons.

12 U.S.C § 1730a(e)(1)(B). See also 12 C.F.R. § 584.4(b)(2).

HFS&LA submitted an Information Statement concerning the proposed reorganization, as required by 12 C.F.R. s 584.4-1, and received the agreement of the Supervisory Agent of the Federal Home Loan Bank of San Franscisco on August 9, 1982 that the proposed reorganization would fit within the exception and would not require pre-approval. Accordingly, no approval of the acquisition was sought from, or issued by the FSLIC. However, Bank Board approval was required and obtained.

This case is distinguishable from Fort Worth National Corp. v. FSLIC, 469 F.2d 47 (5th Cir. 1972) in which an order of the Bank Board was construed to be an order of the FSLIC within the meaning of section 1730a(k). In Fort Worth, the FSLIC action challenged was its disapproval of an acquisition under 12 U.S.C. s 1730a (e). Id. at 50-51. Coincidentally, the

Bank Board, "because of its responsibility for direction of the Corporation," id. at 51, issued the appropriate order. The authority to approve or disapprove the questioned action was defined in section 1730a, and the order appealed was thus an order of the FSLIC. In this case the transaction was exempt from approval under section 1730a by virtue of section 1730a(e)(1(B)(ii), and so the resolutions of the Bank Board can not be construed as orders of the FSLIC under that section.

This appeal raises objections only to the Bank Board's approval of the chartering of the interim institution under 12 C.F.R. § 543.5 and the combination of the interim institution with HFS&LA under 12 C.F.R. § 552.13. Both of these actions invlove regulatory standards and procedures different from those applied by the FSLIC to acquisitions by federal savings and loan holding companies under 12 U.S.C.

1730a. Compare 12 C.F.R. §§ 552 (combinations) and 543 (charter) with 12 C.F.R. § 584.4 (acquisition). The petition therefore cannot reasonably be read as a challenge to action taken under § 1730a. The challenged action did not fall within the authority of the FSLIC, and cannot be appealed under 12 U.S.C. § 1730a(k). Nasser has moved to amend his petition to name the FSLIC as respondent. The addition of FSLIC, however, would not cure the jurisdictional defect because no action of that agency is implicated in this case. Consequently, Nasser's motion to amend is denied.

Nasser also asserts jurisidiction under the fifth amendment to the United States Constitution and the federal Administrative Procedures Act, 5 U.S.C. s 702. Jurisdiction is not proper on either of these bases because both such actions would have to originate in the district court.

28 U.S.C. § 1331. See Federal Home Loan Bank Board v. Elliott, 386 F.2d 42, 50-51 (9th Cir. 1967), cert. denied, 390 U.S. 1011 (1968) (review of Bank Board orders under 12 U.S.C. § 1464 in the district court).

This appeal therefore is DISMISSED.

JUDGMENT

FHLBB# 82-875 & 82-876. No. 83-7064

JUDGMENT CENTRAL CALIFORNIA

Upon petition for review of resolutions by the Federal Home Loan Bank Board.

This cause came on to be heard on the Transcript of the Record from the Federal Home Loan Bank Board. December 06, 1983 and was duly submitted.

On Consideration Whereof, it is now h here ordered and adjudged by this Court that the Petition For Review is DISMISSED.

Filed and entered: January 24, 1984.

12 U.S.C. 1730a

(k) Any party aggrieved by an order of the Corporation under this section may obtain a review of such order by filing in the court of appeals of the United States for the cirucit in which the principal office of such party is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the Corporation be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Corporation, and thereupon the Corporation shall file in the court the record in the proceeding, as provided in section2112 of Title 28. Upon the filing of such petition, such court shall have jurisdiction, which

upon the filing of the record shall be exclusive,to affirm, modify, terminate, or set aside, in whole or in part, the order of the Corporation. Review of such proceedings shall be had as provided in Chapter 7 of Title 5. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section 1254 of Title 28.

12 U.S.C. 1730a

(a)(1) As used in this section, unless the context otherwise requires -

(D) "savings and loan holding company" means an company which directly or indirectly controls an insured institution or controls any other company which is a savings and loan holding company by virtue of this subsection.

12 U.S.C 1730a

(e)(1) It shall be unlawful for-

(A) any savings and loan holding company directly or indirectly, or through one or more subsidiaries or through one or more transactions -

(i) to acquire, except with the prior written approval of the Corporation, the control of an insured institution or a savings and loan holding company, or to retain the control of such and institution or holding company acquired or retained in violation of this section as heretofore or hereafter in effect;

(ii) to acquire, except with the prior written approval of the Corporation, by the process of merger, consolidation, or purchase of assets, another insured or uninsured institution or a savings and loan holding company, or all or substantially all of the assets of any such institution or holding company;

12 U.S.C. 1730a

(e)(1) It shall be unlawful for-

(B) any other company, without the -

prior written approval of the Corporation, directly or indirectly, or through one or more subsidiaries or through one or more transactions to acquire the control of one or more insured institutions, except that such approval shall not be required in connection with the control of an insured institution

(ii) acquired in connection with a reorganization in which a person or group of persons, having had control of an insured institution for more than three years, vestscontrol of that institution in a newly formed holding company subject to the control of the same person or group of persons.

REGULATIONS

12 C.F.R. § 552.13

(h)(3) Notice to stockholders. In addition to publication constituent Charter S associations shall mail notice of the filing of applications to stockholders within ten days of filing.

contents of such notice shall include the information prescribed by paragraph (h)(1) of this section.

12 C.F.R. § 584.4-1

Any company, other than a savings and loan holding company, which proposes to acquire an insured institution without the prior written approval of the Corporation pursuant to paragraph (b)(2) of § 584.4 may do so only upon a showing as provided in this section that the acquisition falls within the exception to such prior written approval contained in that paragraph. This showing shall be made by satisfactory filing of information on a form prescribed by the Corporation.

* * * * * *